

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.219 of 2015

Shyam Nag

....

Petitioner

Mr. Swapnil Roy, proxy counsel
on behalf of B.K. Nayak, Advocate

-versus-

State of Odisha & Others

....

Opposite Parties

Mr. M.K. Khuntia, AGA

CORAM:
JUSTICE M.S. RAMAN

Order No.

ORDER
02.05.2022

- 01.** 1. This matter is taken up by virtual/physical mode.
2. The Original Application No.219 (C) of 2015 was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC(OAC) No.219 of 2015.
3. The Petitioner engaged as NMR under Opposite Party No.4-Executive Engineer, Quality Control Division, Delta Square, Unit-8, Bhubaneswar on 11th May, 1987, came up before this Court with the grievance that though the Govt. in Finance Department issued resolution dated 15th May, 1997, his case was not taken up by the Govt. to absorb him in the regular/wages establishment. Further case of the Petitioner is that similarly placed NMRs were pressing for their regularization in Water Resources Department and it was decided therein to bring over 5702 numbers of NMRs

P.T.O.

engaged prior to 12th April, 1993 to the work charged establishment.

4. Mr. Swapnil Roy, proxy counsel on behalf of Mr. B.K. Nayak, counsel for the Petitioner confines his prayer to the benefit as extended by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in OA No. 3261(C) of 2014 (Maheswar Rout and Others vs. State of Orissa and Others vide order dated 25.04.2017). He also submits that the Petitioner's case is similar to those applicants in the aforesaid O.A. He places reliance on para-8 and 9 of the said order which is quoted hereunder:-

“8. When the applicants were appointed vide Annex.4, dtd.31.12.2009 the instruction of Deptt. Of Water Resources vide letter No. 9548, dtd. 3.4.2010 (Annex.A to the counter) was not in force. So, the service condition is to be determined as it was on the date of appointment i.e. 31.12.2009. As there is clear stipulation in Annex.4 that the applicant is brought over to workcharged establishment w.e.f. 1.3.2009 there is no plausible reason not to give the service and financial benefit to the applicants w.e.f. 1.3.09 as the Govt. is a model benevolent employer. This find further support from the fact that even though the case of the applicants are not considerable with the NMRs whose service were regularized in Annex.5 series but the facts remain that those NMRs had joined after cutoff date 12.4.1993 but those applicants had joined as NMR prior to 12.4.1993.

9. Hence, all the O.As. are allowed. The respondents are directed to extend all service and financial benefit w.e.f. 1.3.2009 to the applicants in the work charged establishment and accordingly the arrear differential pay be disbursed to them.”

Mr. Roy, counsel for the Petitioner brought to the notice of this Court that the aforesaid order of the learned Administrative Tribunal was challenged by the State of Odisha before this Court in WP(C) No. 23222 of 2017. The common order has come to be passed by this Court vide order dated 18.05.2018, wherein the order of Administrative Tribunal has been upheld. Subsequently, the order of this Court being carried to Hon'ble Supreme Court in SLP (Civil) Diary No(s). 11066 of 2020 (State of Orissa & Ors. Vs. Bhagirathi Pattnaik), Hon'ble Apex Court declined to entertain the special leave petition and accordingly dismissed the said writ petition.

5. Mr. M.K. Khuntia, learned Addl. Govt. Advocate does not dispute the similarity in factual position of the Petitioner with those applicants before this Court as well as Hon'ble Supreme Court. He submits that the case of the Petitioner is required to be considered by competent authority on its own merit in the light of the aforesaid decision.

6. Without expressing any opinion on the merits of the matter, the writ petition is disposed of directing that in case the Petitioner files representation before Opposite Party No.1-Principal Secretary, Department of Water Resources for ventilation of his grievance along with copy of the aforesaid decisions as relied on and certified copy of this order as well as copy of the writ petition within a period of three weeks from today, the Opposite Party No.1 shall consider and take a decision on the representation under intimation

to the Petitioner within a period of four months from the date of filing of the representation.

7. It is needless to say that the Opposite Party No. 1 while considering the representation is required to keep in mind that the order of the Odisha Administrative Tribunal in identical fact situation has granted the relief to the Petitioner(s) therein which got upheld by this Court. If the Petitioner is considered entitled to the benefits as granted to those who were parties in OA No. 3261 (C) of 2014, the Opposite Party No. 1 may also extend all financial benefits on consideration of representation of the Petitioner.

8. In view of the above, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Aks